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CC 96-45

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

IN THE MATTER OF PETITION OF  
THE CHEYENNE RIVER SIOUX TRIBE  
TELEPHONE AUTHORITY FOR  
DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER  
PURSUANT TO SECTION 214(e)(6)  
OF THE COMMUNICATIONS ACT,  
ADD/USB FILE NO. 98-21

FEB 24 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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COMMENTS AND MOTION OF THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

SUMMARY

The South Dakota Public Utilities Commission (SDPUC) hereby respectfully moves the Commission to dismiss or in the alternative to defer action upon the request of the Cheyenne River Sioux Tribe Telephone Authority (CRSTTA) for designation as an eligible telecommunications carrier (ETC) for the following reasons:

First, the SDPUC has already designated CRSTTA as an ETC under the authority granted at 47 U.S.C. § 214(e)(2). Therefore, the Petition is moot.

Second, CRSTTA's application is defective. Specifically, CRSTTA has requested ETC designation for areas it does not serve and has not requested ETC designation for areas that it does serve.

Third, the matter is under litigation. CRSTTA and U S WEST have simultaneously been pursuing litigation before the SDPUC, the Circuit Court for Hughes County, South Dakota, and in the United States District Court for South Dakota seeking a determination that SDPUC is without regulatory jurisdiction over CRSTTA. This litigation should be allowed to run its course since CRSTTA is protected by the designation from SDPUC.

Therefore, the Commission should dismiss the Petition of CRSTTA as moot or in the alternative defer action on the same until the pending litigation is resolved.

#### FACTUAL BACKGROUND

The Cheyenne River Sioux Reservation is located in north central South Dakota. The boundaries were fixed by federal statute in 1889 and the reservation was established for the Cheyenne River Band of Sioux Indians. Pursuant to federal assimilation policy, and under the same statute, each member of the Cheyenne River Sioux Tribe was "allotted" a tract of reservation land (usually 160 or 320 acres) to be held in trust by the United States for 25 years. At the expiration of the 25 year trust period, the tribal members received a fee patent to his land and with it unrestricted ownership. Many tribal members received such fee patents and sold their land to non-tribal members. See South Dakota v. Bourland, 508 U.S. 679, 682 (1993)

In 1908, the United States purchased from the Tribe 1.6 million acres of the unallotted or "surplus" tribal land and opened the same for non-Indian homesteading. The goal was to speed the process of assimilation of Indians into mainstream American culture by mixing the races and exposing American Indians to white society. Consequently, the reservation was organized under State law as Dewey and Ziebach counties in South Dakota.<sup>1</sup> The Cheyenne River Sioux Reservation boundaries and the boundaries of Dewey and

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<sup>1</sup> Today trust lands comprise less than 50 percent of the reservation. Bourland at 683.

Ziebach counties are virtually identical. According to the 1990 census, approximately two-thirds of the population of Timber Lake are non-Indians. When the surrounding area of the Timber Lake exchange is considered, approximately 80 percent of the population is non-Indian. See, Zinter decision February 21, 1997 at p. 9. Also see, Exhibit A.

The Cheyenne River Sioux Tribe entered the telephone business in 1958 and authorized the creation of CRSTTA in 1974. CRSTTA currently serves the following exchanges with prefixes: Dupree (365); Isabel (466); South Dupree (538); LaPlante (733); and Eagle Butte (964). These five exchanges encompass a substantial portion (but not all) of the Cheyenne River Sioux Reservation. Further, a substantial portion of the Isabel exchange extends northward outside the Cheyenne River Sioux Reservation boundaries. See Exhibit A which is a color coded map showing the service areas of the local telephone exchanges serving Dewey, Ziebach and southern Corson counties in South Dakota. Portions of the reservation are served by Golden West Telecommunications Cooperative, Inc.; West River Cooperative Telephone Co.; U.S. West; and the Mobridge exchange. Golden West, U S WEST Communications, Inc., West River and Mobridge have all applied for and received ETC designation for the areas they currently serve within the Cheyenne River Sioux Reservation boundaries. CRSTTA did not dispute or resist those designations before the SDPUC.

## ARGUMENT

**The SDPUC has already granted ETC designation to CRSTTA for its appropriate service area, thus, the Petition should be dismissed as moot.**

Simply put, the SDPUC may grant ETC designation to CRSTTA (or anyone else) because it is authorized to do so by federal law. 47 U.S.C. § 214(e)(2) states in part as follows:

A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the state commission. (Emphasis added.)

The SDPUC is a state commission and has acted under the above authority. The United States occasionally utilizes states to regulate in Indian country, particularly when the regulated conduct may have off-reservation impact. See Rice v. Rehner, 463 U.S. 713 (1983) (liquor regulation); Lower Brule Sioux Tribe v. S.D., 104 F.3d 1017, 1025 (8th Cir. 1997) (hunting and fishing); Indian Gaming Regulatory Act, 25 U.S.C. 2710, et seq. (Indian gaming).

The delegation of power to a state commission also makes sense because the Tribe lacks inherent sovereignty to exercise the power they assert in this proceeding. The Cheyenne River Sioux Reservation has been largely opened to non-Indians; CRSTTA operates partially outside their own reservation boundaries and serves substantial numbers of non-Indians. Therefore

Because significant portions of that part of the reservation had been allotted under the General Allotment Act and had passed to non-Indians, those Justices concluded that the

treaty's "exclusive use and benefit" provision was inapplicable to those lands and therefore could not confer tribal authority to regulate the conduct of non-Indians there.

Bourland, 508 U.S. at 688.

The SDPUC was justified in granting ETC designation to CRSTTA.

**The Telephone Authority has requested ETC designation before this Commission in a manner which is both incomplete and inconsistent with its prior request to SDPUC.**

On November 13, 1997, CRSTTA requested designation as a ETC from SDPUC for the five exchanges it currently serves both within and outside the Cheyenne River Sioux Reservation. SDPUC also regularly received applications for and granted ETC designation to Golden West Telecommunications, Inc., U S WEST, West River Cooperative Telephone Co. and the Mobridge Telecommunications Co. exchange for the areas (both within and outside the Cheyenne River Sioux Reservation) served by those exchanges. All of this was accomplished without resistance by or objection to these designations by any of the telephone companies involved.

Before this Commission, CRSTTA requested ETC designation "within its local exchange carrier service area." (Petition at 1) On the same page, CRSTTA defines its service area as "the Cheyenne River Indian Reservation." This misstatement is repeated at page 5 of the Petition--"thus, the reservation comprises the Telephone Authority's service area."

Again, at page 11 of the Petition CRSTTA makes the following misstatement:

As required by 47 CFR § 54.101(a)(4), the Telephone Authority provides 'single party service to all subscribers in Dewey and Ziebach counties, which is the entire Cheyenne River Sioux Reservation.'

The error is compounded at page 13 of the Petition:

Thus, the Telephone Authority qualifies for ETC designation for the telephone exchanges it operates within the exterior boundaries of the Reservation, which constitutes its service area.

The CRSTTA request appears to include all the reservation, and omits that portion of CRSTTA's service area off-reservation in Corson County. The Petition should be denied or CRSTTA instructed to amend if the request is in error.

**The Commission should defer action on the CRSTTA Petition until the pending litigation has run its course.**

CRSTTA acknowledged that litigation is pending in the state courts of South Dakota over whether SDPUC has jurisdiction to disapprove a proposed sale of three local telephone exchanges located in Indian country from U S WEST to CRSTTA. (Petition at 4, fn 1) It should also be noted that on November 22, 1995, CRSTTA and U.S. West commenced an action in United States District Court for South Dakota (CIV 95-3035) against the SDPUC seeking the following:

The CRSTTA and U S WEST seek a judgment from this court declaring that the laws of the State of South Dakota do not apply to the sale of the Morristown, Timber Lake and McIntosh telephone exchanges by U.S. West to the CRSTTA and that the PUC lacks jurisdiction to regulate the operation of the Morristown, Timber Lake and McIntosh telephone exchanges by the CRSTTA.

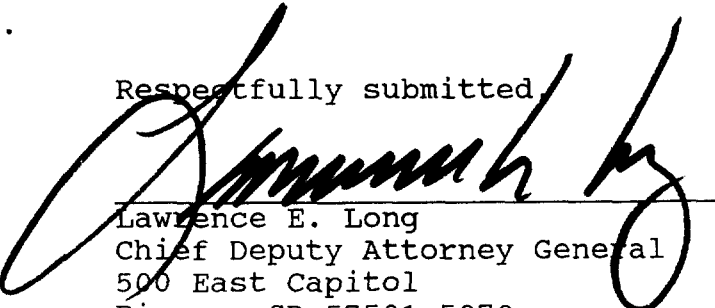
See Exhibit B, p 7, #22.

The Tribe and U.S. West have held CIV 95-3035 in abeyance pending a decision in the South Dakota state courts. Both the state court and the U.S. District Court proceedings must necessarily address the nature and extent of SDPUC's regulatory jurisdiction over CRSTTA operating both within and outside of its own reservation, because the Timber Lake exchange is located partially within and partially outside of the Cheyenne River Sioux Reservation. The map at Ex. A discloses that CRSTTA now serves a similar area, that is, partially within and partially outside of its reservation. Therefore, the pending cases will be addressing similar regulatory issues. The South Dakota and federal courts will make decisions based upon a full record and CRSTTA is protected by the ETC designation already received. Consequently, the Commission should defer decision until the pending litigation runs its course.


#### CONCLUSION

For all the foregoing reasons, the Petition of CRSTTA should be dismissed or deferred.

Respectfully submitted,



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Camron Hoseck  
Special Assistant Attorney General  
S.D. Public Utilities Commission



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Comments and Motion of the South Dakota Public Utilities Commission in the foregoing Petition of the Cheyenne River Sioux Tribe Telephone Authority for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act, FCC 97-419 to the following by United States mail, First Class, postage prepaid upon the following individuals at their last known address:

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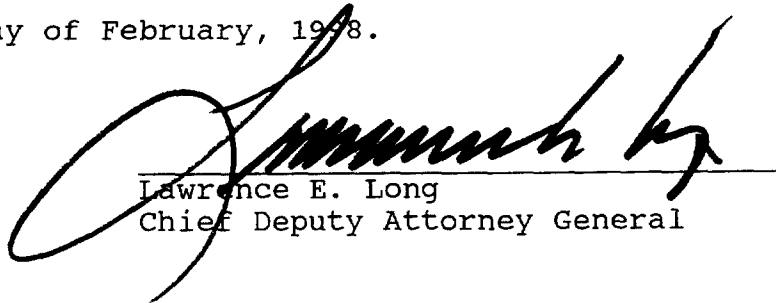
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Certificate of Service  
Page 2

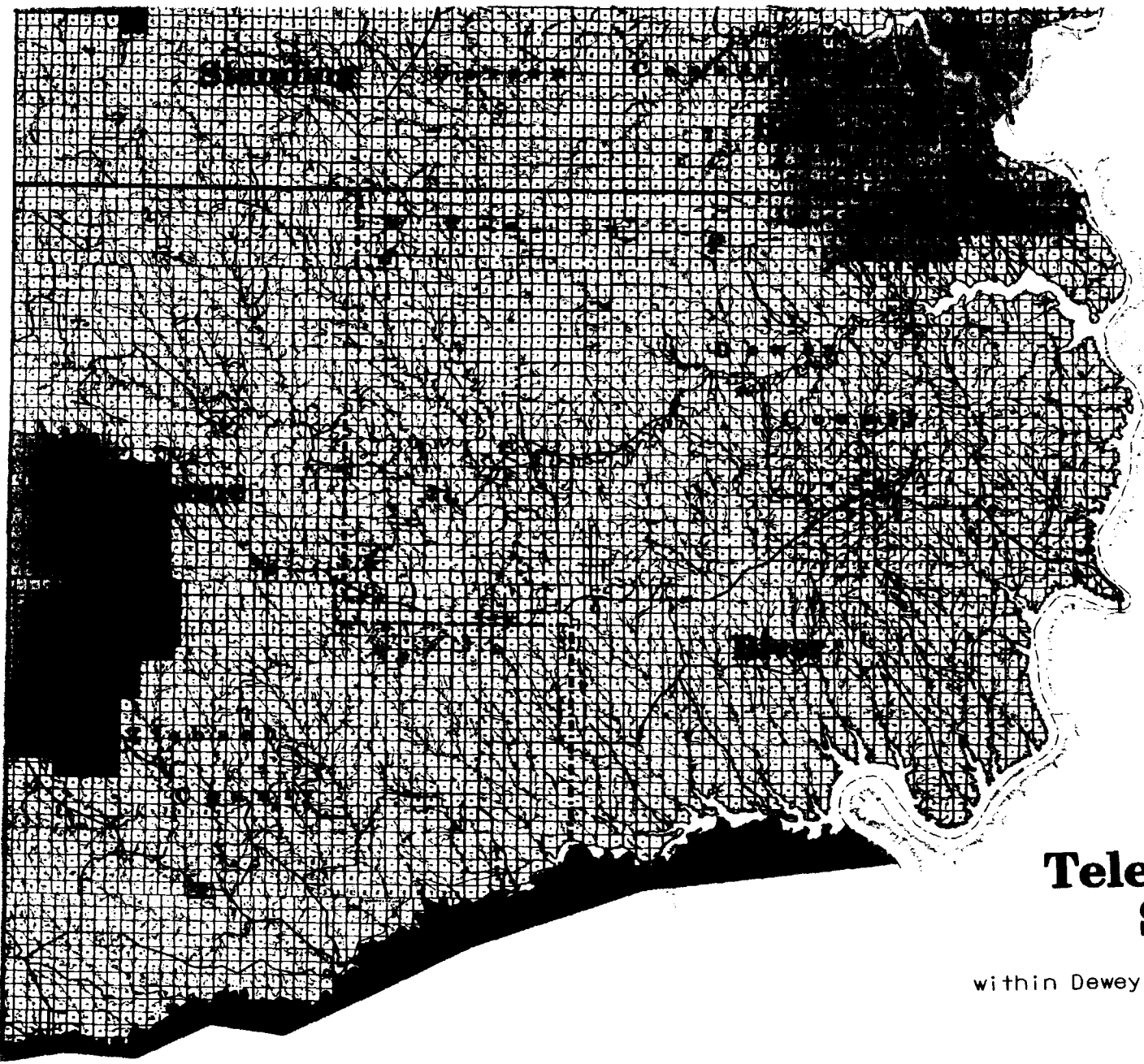
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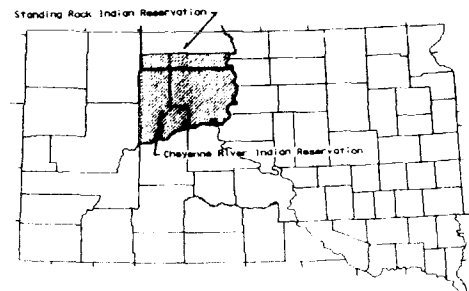
Dated this 17th day of February, 1998.











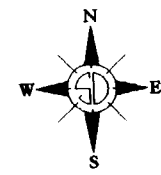
Lawrence E. Long  
Chief Deputy Attorney General



*Ch. 10, Sec. 2*  
**SOUTH DAKOTA**



-  - West River Coop (Bison)
-  - US West Communications
-  - Golden West Telephone Coop
-  - C.R.S.T.T.A.
-  - Mobridge Telecommunications
-  - West River Telecom Coop (Hazen)
-  - Stateline Telecommunications
-  - County Line



# **Telephone Company Service Areas**

within Dewey, Ziebach, and Southern Corson Count  
 as of 17 February, 1998

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

CHEYENNE RIVER SIOUX TRIBE  
TELEPHONE AUTHORITY,

Plaintiff,

U.S. WEST COMMUNICATIONS, INC.,

Plaintiff-Intervenor,

vs.

PUBLIC UTILITIES COMMISSION  
OF SOUTH DAKOTA, KENNETH  
STOFFERAHN, Chairman of the Public  
Utilities Commission of South Dakota,  
JAMES A. BURG, Commissioner of the  
Public Utilities Commission of South  
Dakota, and LASKA SHOENFELDER,  
Commissioner of the Public Utilities  
Commission of South Dakota,

Defendants.

CIV. 95-3035

FIRST AMENDED COMPLAINT

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PRELIMINARY STATEMENT

The Cheyenne River Sioux Tribe ("Tribe") is a federally recognized Indian tribe that is self-governing, pursuant to the Indian Reorganization Act of 1934 (codified as amended at 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479), and with a Constitution and By-Laws approved by the Secretary of the Interior on December 27, 1935. The Cheyenne River Sioux Reservation ("Reservation") is located within the State of South Dakota, and its boundaries are defined by the Act of April 29, 1868, 15 Stat. 635, the Act of March 2,

1889, ch. 405, 25 Stat. 888, § 4, and the Act of May 29, 1908, ch. 218, 35 Stat. 460. Certain of the lands within the reservation boundaries are held in trust by the United States for the benefit of the Tribe.

The Cheyenne River Sioux Tribe Telephone Authority ("CRSTTA") is a division of the Tribe and, among other things, operates telephone exchanges within the reservation boundaries. It enjoys the same sovereign immunity as the Tribe. Because it is a division of the Tribe, the CRSTTA is a person within the meaning of 42 U.S.C. § 1983 with standing to bring suit for violations of its civil rights.

### JURISDICTION

1. Jurisdiction of this Court is founded upon 28 U.S.C. §§ 1331, 1343(a)(3), and 1362. A declaration of rights and injunctive relief is sought under 28 U.S.C. § 2201, 28 U.S.C. § 2202, and 42 U.S.C. § 1983. Damages, injunctive relief and attorneys fees are also sought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

### PARTIES

2. The Plaintiff CRSTTA is the tribal agency which, among other things, is responsible for operating telephone exchanges within the reservation boundaries. The CRSTTA also provides other services and administers and manages various tribal businesses. The CRSTTA brings this suit on its own behalf.

3. The Plaintiff-Intervenor U.S. West Communications, Inc., ("U.S. West") is a wholly owned subsidiary of U.S. West

Incorporated, a Delaware corporation, providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunication services, and other telecommunication services throughout South Dakota.

4. The Defendant Public Utilities Commission of South Dakota ("PUC") is the state regulatory body with authority to approve or disapprove the sale of telephone exchanges under state law and to regulate the operation of such exchanges.

5. The Defendant Commissioner Kenneth Stofferahn is the Chairman of the PUC, and is made a party defendant to this action in his official and personal capacities.

6. The Defendant Commissioner James A. Burg is a Commissioner of the PUC, and is made a party defendant to this action in his official and personal capacities.

7. The Defendant Commissioner Laska Shoenfelder is a Commissioner of the PUC, and is made a party defendant to this action in her official and personal capacities.

### ALLEGATIONS

8. On December 20, 1994, U.S. West, the CRSTTA and various other purchasers filed a joint application, later amended on May 1, 1995, with the PUC to approve the sale of 67 local telephone exchanges. The CRSTTA desired to purchase and U.S. West desired to sell the Morristown, Timber Lake and McIntosh telephone exchanges. The Morristown exchange is located within the boundaries of the Standing Rock Sioux Reservation. The Timber Lake exchange is located within the boundaries of the Cheyenne River Sioux Reservation and the Standing Rock Sioux Reservation.

The McIntosh exchange is located within the boundaries of the Standing Rock Sioux Reservation.

9. The joint application sought, among other things, a declaration that the sale and transfer of the 67 telephone exchanges did not require PUC approval. The PUC approved the sale of 63 of the telephone exchanges at issue.

10. Pursuant to the laws of the State of South Dakota, the PUC purported to assume jurisdiction over the sale of the Morristown, Timber Lake and McIntosh telephone exchanges from U.S. West to the CRSTTA.

11. On March 30, 1995, South Dakota enacted S.D. CODIFIED LAWS ANN. § 49-31-59. That statute provides that any sale of a telephone exchange must be approved by the PUC. In determining whether to approve a sale of a telephone exchange, S.D. CODIFIED LAWS ANN. § 49-31-59 states that the PUC must consider, among other things, the payment of taxes.

12. On July 31, 1995, the PUC denied the CRSTTA's application to purchase the Morristown, Timber Lake and McIntosh telephone exchanges from U.S. West. The PUC stated that because the CRSTTA refused to waive its sovereign immunity, the State of South Dakota and its subdivisions would have no means of requiring the CRSTTA to pay gross receipts tax on, or to regulate the operation of the Morristown, Timber Lake and McIntosh telephone exchanges. Second, the PUC determined that approval of the sale to the CRSTTA would constitute an improper delegation of the PUC's authority. Third, the PUC held that it lacked authority to enter into a tax agreement with the CRSTTA. Fourth,

the PUC concluded that because the Telephone Authority had not waived its immunity to suit, the PUC would not approve the sale of the three exchanges. Pursuant to S.D. CODIFIED LAWS ANN. § 1-26-30.2, U.S. West has appealed the decisions of the PUC refusing to approve the CRSTTA's purchase of the Timber Lake, Morristown and McIntosh Exchanges to the Circuit Court, Sixth Judicial Circuit, Hughes County. The CRSTTA has intervened in that appeal.

13. The PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder lack authority to control or regulate the CRSTTA's purchase and operation of telephone exchanges located within the boundaries of an Indian reservation.

14. The application of state regulatory law to the CRSTTA by the PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder has unlawfully infringed and continues to infringe upon and wrongfully interfere with the CRSTTA's sovereign rights as a division of the Tribe.

15. Commissioner Stofferahn, Commissioner Burg and Commissioner Shoenfelder, acting in their personal capacities, have violated the CRSTTA's civil rights, including, but not limited to the CRSTTA's federally protected rights under the Indian Commerce Clause, U.S. CONST. art. I, § 8, cl. 3, the Indian Reorganization Act (codified as amended at 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479), the Indian Self-Determination Act (codified as 25 U.S.C. §§ 450-450n), the Indian Civil Rights Act (codified as 25 U.S.C. §§ 1301-1341), and the equal protection clause of U.S. CONST. amend. XIV, by applying S.D. CODIFIED LAWS ANN. § 49-31-59, so as to



deny the CRSTTA's application to purchase the Morristown, Timber Lake and McIntosh telephone exchanges from U.S. West based upon the CRSTTA's assertion of sovereign immunity.

16. As a result of the unlawful enforcement of the laws of the State of South Dakota, the PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder denied the CRSTTA the right to purchase the Morristown, Timber Lake and McIntosh telephone exchanges from U.S. West.

17. The PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder continue to assert the right and power to control and otherwise regulate the purchase and operation by the CRSTTA of the Morristown, Timber Lake and McIntosh telephone exchanges.

18. The CRSTTA has no adequate remedy at law for the PUC's, Commissioner Stofferahn's, Commissioner Burg's, and Commissioner Shoenfelder's infringement upon its immunity from state jurisdiction.

19. An actual case or controversy exists between the parties because the CRSTTA asserts the right to be free from state jurisdiction with regard to the purchase and operation of the Morristown, Timber Lake and McIntosh telephone exchanges, and the PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder contend and assert that no such right exists.

20. To the extent that S.D. CODIFIED LAWS ANN. § 49-31-59 requires the PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder to consider the payment of taxes or the PUC's ability to regulate the Morristown, Timber Lake and

McIntosh telephone exchanges after purchase by the CRSTTA in determining whether to approve the sale of the Morristown, Timber Lake and McIntosh telephone exchanges, S.D. CODIFIED LAWS ANN. § 49-31-59 is preempted and otherwise barred by federal law, including but not limited to U.S. CONST. art. I, § 8, cl. 3 (Indian commerce clause), federal common law limiting state infringement of tribal sovereignty and prohibiting unduly burdening federal and tribal interests, the federal policy of Indian self-determination as expressed in the Indian Reorganization Act (codified as amended at 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479) and other federal laws, and 25 U.S.C. §§ 1321, 1322, and 1326 relating to procedures for state assumption of jurisdiction over Indian Reservations.

#### **FIRST CLAIM FOR RELIEF**

21. Paragraphs 1 through 20 are incorporated herein by reference.

22. The CRSTTA and U.S. West seek a judgment from this Court declaring that the laws of the State of South Dakota do not apply to the sale of the Morristown, Timber Lake and McIntosh telephone exchanges by U.S. West to the CRSTTA and that the PUC lacks jurisdiction to regulate the operation of the Morristown, Timber Lake and McIntosh telephone exchanges by the CRSTTA.

#### **SECOND CLAIM FOR RELIEF**

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. The CRSTTA and U.S. West seek a judgment from this Court declaring that to the extent S.D. CODIFIED LAWS ANN. § 49-31-59 or any other provision of South Dakota law requires the PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder to consider the payment of taxes by the CRSTTA or the ability of the PUC to regulate the Morristown, Timber Lake and McIntosh telephone exchanges after purchase by the CRSTTA in determining whether to approve the sale of the Morristown, Timber Lake and McIntosh telephone exchanges to the CRSTTA, that such state law is preempted by federal law, including, but not limited to U.S. CONST. art. I, § 8, cl. 3 (Indian commerce clause), federal common law limiting state infringement of tribal sovereignty and forbidding unduly burdening federal and tribal interests, the federal policy of Indian self-determination as expressed in the Indian Reorganization Act (codified as amended at 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479) and other federal laws, and 25 U.S.C. §§ 1321, 1322, and 1326 relating to procedures for state assumption of jurisdiction over Indian Reservations.

### **THIRD CLAIM FOR RELIEF**

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. The CRSTTA and U.S. West seek permanent injunctive relief enjoining the PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder from enforcing the laws of South Dakota against the purchase and operation by the CRSTTA of the Morristown, Timber Lake and McIntosh telephone exchanges.

27. In the absence of such an injunction, the PUC, Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder will continue to attempt to enforce state law against the purchase and operation of the Morristown, Timber Lake and McIntosh telephone exchanges by the CRSTTA in contravention of: the Enabling Act, Act of February 22, 1889, ch. 180, 25 Stat. 676; U.S. CONST. art. I, § 8, cl. 3 (Indian commerce clause); the equal protection clause of U.S. CONST. amend. XIV; federal common law limiting state infringement of tribal sovereignty and forbidding unduly burdening federal and tribal interests; federal policy of Indian self-determination as expressed in the Indian Reorganization Act (codified as amended at 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479) and other federal laws; and 25 U.S.C. §§ 1321, 1322, and 1326 relating to procedures for state assumption of jurisdiction over Indian Reservations.

#### FOURTH CLAIM FOR RELIEF

28. Paragraphs 1 through 27 are incorporated herein by reference.

29. The CRSTTA and U.S West seek a declaratory judgment that the application of S.D. CODIFIED LAWS ANN. § 49-31-59 to prohibit the sale of the Timberlake, Morristown and McIntosh Exchanges to the CRSTTA is unconstitutional because it violates the CRSTTA's right to equal protection under the law guaranteed by the fourteenth amendment of the Constitution of the United States and article VI, section 18 of the South Dakota Constitution.

### FIFTH CLAIM FOR RELIEF

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. Pursuant to 42 U.S.C. § 1983, the CRSTTA seeks monetary damages and permanent injunctive relief against Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder in their personal capacities, for violation of the CRSTTA's civil rights in denying the CRSTTA the right to purchase the Morristown, Timber Lake and McIntosh telephone exchanges from U.S. West, including violations of: the Indian Commerce Clause, U.S. CONST. art. I, § 8, cl. 3; the Indian Reorganization Act, 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479; the Indian Self-Determination Act, 25 U.S.C. §§ 450-450n; the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1341; and the CRSTTA's right to the equal protection of the laws under U.S. CONST. amend. XIV.

### REQUEST FOR RELIEF

Wherefore, Plaintiff and Plaintiff-Intervenor pray that this Court issue:

A. A judgment declaring that:

1. The laws of the State of South Dakota regarding the regulation and sale of telephone exchanges are not applicable to the purchase and operation by the CRSTTA of the Morristown, Timber Lake and McIntosh telephone exchanges.

2. The PUC's enforcement of South Dakota's laws regulating telephone exchanges to prohibit the sale of the

Morristown, Timber Lake and McIntosh telephone exchanges by U.S. West to the CRSTTA violates: the Enabling Act, Act of February 22, 1889, ch. 180, 25 Stat. 676; U.S. CONST. art. I, § 8, cl. 3 (Indian commerce clause); the equal protection clause of U.S. CONST. amend. XIV; federal common law limiting state infringement of tribal sovereignty and forbidding unduly burdening federal and tribal interests; federal policy of Indian self-determination as expressed in the Indian Reorganization Act (codified as amended at 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479) and other federal laws; 25 U.S.C. §§ 1321, 1322, and 1326 relating to procedures for state assumption of jurisdiction over Indian Reservations.

3. S.D. CODIFIED LAWS ANN. § 49-31-59 is unconstitutional because it violates the CRSTTA's right to the equal protection of the laws guaranteed by U.S. CONST. amend. XIV and S.D. CONST. art. VI, § 18.

4. S.D. CODIFIED LAWS ANN. § 49-31-59 is preempted by federal law to the extent it requires the PUC to consider the payment of taxes or the ability of the PUC to regulate the operation of the Morristown, Timber Lake and McIntosh telephone exchanges by the CRSTTA in determining whether to approve the sale of the Morristown, Timber Lake and McIntosh telephone exchanges by U.S. West to the CRSTTA.

B. An injunction permanently restraining the Defendants from attempting to enforce South Dakota's laws regulating telephone exchanges against the purchase and operation by the

CRSTTA of the Morristown, Timber Lake and McIntosh telephone exchanges.

C. Damages and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against Commissioner Stofferahn, Commissioner Burg, and Commissioner Shoenfelder in their personal capacities for violation of the CRSTTA's civil rights.

D. An award of costs, attorneys fees under 42 U.S.C. § 1988, and such other relief as the court finds to be just and equitable.

Date: Nov. 22, 1995

Respectfully submitted,

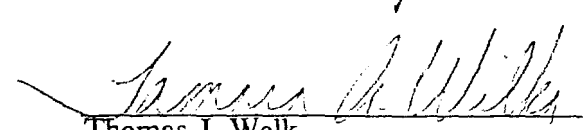
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